

THE BOMBAY (DISTRICT) TOBACCO ACT, 1933.**CONTENTS.****PREAMBLE.****SECTIONS.**

1. Short title and extent.
2. Definitions.
3. Appointment and duties of Commissioner.
4. Collectors charged with carrying out the Act.
5. Appointment of special Collectors and other tobacco officers.
6. Prohibition of sale of tobacco without licence.
7. Grant of licences.
- 7A. Levy of salè's tax.
8. Suspension or revocation of licences.
9. Issue of warrants.
10. Power of entry, search, seizure and detention.
11. Searches how made.
12. Procedure for arrest without warrant.
13. Officers bound to assist.
14. Tobacco Officer to have powers of investigation.
15. Offences under the Act to be bailable.
16. Articles seized.
17. Penalty for contravention of this Act.
18. Penalty for vexatious search or arrest.
19. Penalty for vexatious delay in forwarding an arrested person to a Magistrate.
20. Confiscation.
21. Procedure in confiscation.
22. Compounding offences.
23. Cognizance of offences.
24. Protection of persons acting in good faith and limitation of suits and prosecutions.
25. Recovery of tobacco revenues, etc.
26. Appeals and revision.
27. Power of the Provincial Government to make rules.
28. Delegation of powers.

SCHEDULE.

***BOMBAY ACT No. II OF 1933.¹**

[THE BOMBAY (DISTRICT) TOBACCO ACT, 1933.]

[27th March 1933.]

Amended by Bom. 2 of 1935.

" " " 26 of 1935.

Adapted and modified by the Adaptation of Indian Laws Order in Council.

Amended by Bom. 6 of 1938.

An Act for the imposition and levy of fees on the sale of Tobacco in the Presidency of Bombay excluding the City of Bombay.

5 & 6
Geo. V,
c. 61. WHEREAS it is expedient to impose and levy licence fees on the sale of tobacco in the Presidency of Bombay excluding the City of Bombay; And whereas the previous sanction of the Governor General required by section 80A (3) of the Government of India Act and the previous sanction of the Governor required by section 80C of the said Act have been obtained for the passing of this Act; It is hereby enacted as follows :—

1. (1) This Act may be called the Bombay (District) Tobacco Act, 1933.

Short title
and extent.

(2) It extends to the whole of the Presidency of Bombay except the City of Bombay and such area as ²[the Provincial Government] may, by notification published in the ³[*Official Gazette*], exclude.

(3) It shall come into force from the 1st day of April 1933 ⁴* * *.

2. In this Act, unless there is anything repugnant in the subject or context,— Definitions.

⁵[(1A) "Broker" means an agent whose ordinary course of business is to negotiate and make contracts for the sale and purchase of tobacco;]

(1) "Collector" includes any officer appointed under section 5 to exercise the powers and perform the duties of a Collector under this Act;

(2) "Commissioner" means an officer appointed under section 3 to be a Commissioner for the purposes of this Act;

(3) "Grower" means a person who by himself or by members of his household or by his servants, agents or tenants grows tobacco;

(4) "Hawker" means a person who goes from place to place or from house to house carrying or exposing for sale tobacco or exposing samples of tobacco to be afterwards delivered;

(5) "Holder" means a holder of a licence;

(6) "Licence" means a licence for the sale of tobacco granted under section 7;

(7) "Magistrate" means a magistrate of the first or second class or a magistrate of the third class specially authorised in this behalf by the District Magistrate;

(8) "Prescribed" means prescribed by rules;

¹ For Statement of Objects and Reasons, see *Bombay Government Gazette*, 1933, Part V, pp. 474-477 and for Proceedings in Council, see *Bombay Legislative Council Debates*, 1933, Vol. XXXVII.

² The words "the Provincial Government" were substituted for the word "Government" by the Adaptation of Indian Laws Order in Council.

³ The words "*Official Gazette*" were substituted for the words "*Bombay Government Gazette*", *ibid.*

⁴ The words "and shall remain in force for a period of four years" were deleted by Bom. 6 of 1938, s. 3.

⁵ This clause was inserted by Bom. 2 of 1935, s. 3.

* This Act has been suspended by Bom. 11 of 1945, read with Bom. 1 of 1948.

(9) "Retail sale" means a sale other than a wholesale sale ;

(10) "Rule" means a rule made under section 27 ;

(11) "Tobacco" includes bidis, cigarettes and cigars, the leaf, stalks and stem of the tobacco plant and any preparation or mixture of tobacco ;

(12) "Tobacco Officer" means the Commissioner, a Collector or any other officer or person lawfully appointed or invested with powers under section 5 ;

(13) "Tobacco revenue" means revenue derived or derivable from any fee, fine (other than a fine imposed by a court of law) or confiscation imposed or ordered and all sums accruing to ¹[the Provincial Government], under the provisions of this Act ; and

(14) "Wholesale sale" means a sale of tobacco to traders in that commodity for the purpose of trade.

Appointment
and duties of
Commis-
sioner.

3. (1) ¹[The Provincial Government] may, by notification in the ²[*Official Gazette*], appoint for the whole or for any part of the Presidency of Bombay in which this Act shall be in force, an officer to be the Commissioner.

(2) The Commissioner shall, subject to the control of ¹[the Provincial Government], superintend the administration of the Tobacco Department and the collection of tobacco revenue.

Collectors
charged with
carrying out
the Act.

4. Subject to the control and direction of the Commissioner and the orders of ¹[the Provincial Government], the Collectors are charged with the collection of tobacco revenue and with the carrying out of the provisions of this Act.

Appointment
of special
Collectors
and other
tobacco
officers.

5. (1) ¹[The Provincial Government] may, by notification in the ²[*Official Gazette*], appoint any person other than the Collector of Land-revenue to exercise, in any district or place, all the powers and perform all the duties conferred and imposed by this Act on a Collector, subject to such control, if any, in addition to that of the Commissioner and of ¹[the Provincial Government], as ¹[the Provincial Government] may from time to time direct.

(2) The Commissioner may, subject to the general or special orders of ¹[the Provincial Government], ³assign to any Tobacco Officer such powers and duties under this Act, as he may deem fit.

(3) ¹[The Provincial Government], or subject to such orders as aforesaid, the Commissioner may invest any officer or person with such powers and impose upon him such duties under this Act, as ¹[the Provincial Government] or the Commissioner, as the case may be, may deem fit and any such officer shall thereupon exercise the said powers and discharge the said duties in addition to the powers and duties incident to his principal office.

Prohibition
of sale of
tobacco with-
out licence.

6. No person shall sell or expose for sale any tobacco "[or carry on business as a broker] except under and in accordance with the terms and conditions of a licence granted under section 7 :

Provided that a grower of tobacco may, without licence, sell tobacco (other than bidis, cigarettes, cigars and any preparation or mixture of tobacco) grown by him :

¹ The words "the Provincial Government" were substituted for the word "Government" by the Adaptation of Indian Laws Order in Council.

² The words "*Official Gazette*" were substituted for the words "*Bombay Government Gazette*", *ibid.*

³ These words were substituted for the words "appoint any person to be a Tobacco Officer and assign to him", *ibid.*

⁴ These words were inserted by Bom. 2 of 1935, s. 4.

¹[Provided further that subject to the prescribed conditions ²[the Provincial Government] or the prescribed authority may exempt any person from taking out such a licence.]

Explanation.—The supply of tobacco by clubs to their members on payment of any price, fee or subscription is a sale within the meaning of this section.

7. ³(1) Every licence for the sale of tobacco whether wholesale, retail or by a hawker ⁴[or for carrying on business as a broker] shall be granted annually or for any less period by the Collector in the manner prescribed by ²[the Provincial Government] on payment of fees ⁵ * * * specified, in the schedule hereto annexed.

(2) Such licences shall be in such form and subject to such conditions and restrictions as ²[the Provincial Government] may prescribe.

⁶[7A. Notwithstanding anything contained in section 7, the Provincial Government may in addition to the licence fee leviable under the said section, levy also a tax at such rates, subject to such conditions and in such areas as may be prescribed, on any sale of tobacco on *ad valorem* basis not exceeding 50 per cent. of the price of such sale.]

8. (1) Subject to such conditions as may be prescribed by ²[the Provincial Government], the authority granting any licence may suspend or cancel the licence,

(a) if any fee payable under the licence is not duly paid ; or

(b) if there be any breach of any of the conditions of the licence or of any other licence previously granted to the holder either by the holder or his servant or any one acting on behalf of the holder with his express or implied permission.

(2) The holder shall not be entitled to any compensation for the cancellation or suspension of a licence under sub-section (1) nor to refund of any fees paid or deposit made in respect thereof.

(3) Where a licence is cancelled or suspended under sub-section (1) the balance of the fee payable under the licence may be recovered from the holder or his surety in the same manner as tobacco revenue.

9. (1) The Commissioner or Collector or any other Tobacco Officer duly empowered in this behalf or a Magistrate may issue a warrant,—

(a) for the arrest of any person whom he has reason to believe to have committed an offence punishable under this Act, or

(b) for the search, whether by day or by night, of any building, vessel or place in which he has reason to believe that any tobacco is sold or is exposed for sale contrary to the provisions of this Act.

(2) All warrants issued under this section shall be executed in accordance with the provisions of the Code of Criminal Procedure, 1898, by a Police Officer or by a Tobacco Officer duly empowered in this behalf or if the officer issuing the warrant deems fit by any other person.

10. The Collector or any other Tobacco Officer duly empowered in this behalf may—

(a) enter and search, at any time, by day or by night, any building, vessel, vehicle or any place in which he has reason to believe that any tobacco liable to confiscation under this Act is kept or concealed ;

¹ This proviso was added by Bom. 26 of 1935, s. 2.

² The words "the Provincial Government" were substituted for the word "Government" by the Adaptation of Indian Laws Order in Council.

³ Nothing in the Bombay (District) Tobacco (Amendment) Act, 1935, shall be deemed in any way to affect the validity, conditions or restrictions of a licence granted before the 31st day of March 1935, or any rights or liabilities acquired or incurred thereunder (see section 11 of Bom. 2 of 1935).

⁴ These words were inserted by Bom. 2 of 1935, s. 5 (1).

⁵ The words "subject to the maxima" were deleted, *ibid*, s. 5 (2).

⁶ This section was inserted by Bom. 6 of 1938, s. 4.

(b) seize any tobacco or any other article which he has reason to believe is liable to confiscation under this Act; and

(c) detain and arrest any person whom he has reason to believe to be guilty of any offence punishable under this Act.

Searches how made. 11. All searches made under section 10 shall be made in accordance with the provisions of the Code of Criminal Procedure, 1898. V of 1898.

Procedure for arrest without warrant. 12. The provisions of section 61 of the Code of Criminal Procedure, 1898, shall apply to all arrests without warrant made under section 10. V of 1898.

Officers bound to assist. 13. All village officers, all village servants, useful to [the Provincial Government], and all officers of the departments of Excise, Police and Revenue shall be bound—

(a) to give immediate information to a Tobacco Officer of the commission of any offence, or of the intention or preparation to commit any offence punishable under this Act which may come to their knowledge;

(b) to take all reasonable measures in their power to prevent the commission of any such offence which they may know or have reason to believe is about to be committed; and

(c) to assist any Tobacco Officer in carrying out the provisions of this Act.

Tobacco Officer to have powers of investigation. 14. (1) Every Tobacco Officer not below such rank as [the Provincial Government] may determine, shall within the area for which he is appointed, have power to investigate all offences punishable under this Act.

(2) Every such officer shall in the conduct of such investigation exercise the powers conferred by the Code of Criminal Procedure, 1898, upon an officer in charge of a police station for the investigation of a cognizable offence: V of 1898.

Provided that—

(a) If such officer is of opinion that there is not sufficient evidence or reasonable ground of suspicion to justify the forwarding of an accused to a Magistrate, or that the person arrested may be discharged with a warning, such officer shall release him on his executing a bond, with or without sureties, to appear if and when so required before a Magistrate and shall make a full report of the case to his official superior and be guided by the order which he shall receive on such report;

(b) the powers of a Tobacco Officer empowered under this section shall be subject to such further modifications or restrictions as [the Provincial Government] may determine.

Offences under the Act to be bailable. 15. (1) All offences punishable under this Act shall be bailable.

(2) Any Tobacco Officer empowered under section 14 to investigate an offence punishable under this Act shall have power to grant bail in accordance with the provisions of the Code of Criminal Procedure, 1898, to any person arrested without warrant for an offence punishable under this Act. V of 1898.

Articles seized. 16. When anything has been seized by a Tobacco Officer exercising powers under section 14 such officer, after such inquiry as may be necessary—

(a) if it appears that such thing is required as evidence in the case of any person arrested, shall forward the thing to the Magistrate to whom such person is forwarded or for his appearance before whom bail has been taken;

¹ The words "the Provincial Government" were substituted for the word "Government" by the Adaptation of Indian Laws Order in Council.

(b) if it appears that such thing is liable to confiscation but is not required as evidence as aforesaid, shall send the thing with a report of the particulars of the seizure to his superior officer, if any ;

(c) if no offence appears to have been committed, shall return the thing to the person from whose possession it was taken and shall report to his superior officer, if any, accordingly.

17. Whoever in contravention of this Act or of any rule or order made under this Act or of any terms or conditions of a licence sells or exposes for sale tobacco ^{Penalty for contravention of this Act.} ¹[or carries on business as a broker] shall be punishable on conviction with a fine not exceeding two hundred rupees.

18. Any Tobacco Officer or other person who, without reasonable ground of suspicion, enters or searches, or causes to be searched, any building, vessel or place, or vexatiously and unnecessarily seizes the property of any person on the pretence of seizing or searching for anything liable to confiscation under this Act, ^{Penalty for vexatious search or arrest.}

or vexatiously and unnecessarily detains, searches or arrests any person, shall, on conviction, be punishable for every such offence, with fine which may extend to two hundred rupees.

19. Any Tobacco Officer or other person who vexatiously and unnecessarily delays forwarding to a Magistrate any person arrested under this Act and not released by him on bail shall on conviction be punishable with fine which may extend to fifty rupees. ^{Penalty for vexatious delay in forwarding an arrested person to a Magistrate.}

20. Whenever an offence under this Act has been committed, all tobacco in respect of which the offence has been committed and every box, receptacle, package or covering in which such tobacco is contained shall be liable to confiscation. ^{Confiscation.}

21. (1) When in any case tried by a Magistrate the Magistrate decides that anything is liable to confiscation under the foregoing section, he may, after hearing the person, if any, claiming any right thereto and the evidence, if any, which he produces in support of his claim, order confiscation or may give the owner option to pay such fine as the Magistrate deems fit in lieu of confiscation. ^{Procedure in confiscation.}

(2) When an offence under this Act has been committed and the offender is not known or cannot be found or when anything liable to confiscation under this Act and not in the possession of any person cannot be satisfactorily accounted for, the case shall be enquired into and determined by the Collector, who may order confiscation :

Provided that no such order shall be made before the expiration of one month from the date of seizing the thing intended to be confiscated, or without hearing the person, if any, claiming any right thereto and the evidence, if any, which he produces in support of his claim.

22. (1) The Commissioner or any Collector or any other Tobacco Officer specially empowered by ²[the Provincial Government] in this behalf may accept from any person whose licence is liable to be cancelled or suspended under section 8 or who is reasonably suspected of having committed an offence under section 17 a sum of money in lieu of such cancellation or suspension or by way of composition for the offence which may have been committed, as the case may be, and in all ^{Compound- ing offences.}

¹ These words were inserted by Bom. 2 of 1935, s. 6.

² The words " the Provincial Government " were substituted for the word " Government " by the Adaptation of Indian Laws Order in Council.

cases whatsoever in which any property has been seized as liable to confiscation under this Act may release the same on payment of the value thereof as estimated by such officer.

(2) On the payment by such person of such money or value or both, as the case may be, to such officer, such person if in custody shall be set at liberty and the property seized shall be released and if criminal proceedings shall have been instituted against such person, the composition shall be held to amount to an acquittal and in no case shall any further proceedings be taken against such person or property with reference to the same facts.

Cognizance of offences. 23. (1) No Magistrate shall take cognizance of any offence punishable under this Act,—

(i) except upon the complaint or report of the Commissioner, or a Collector or any other Tobacco Officer empowered in this behalf or of an Excise or Police Officer, or

(ii) except upon his own knowledge or suspicion.

(2) Except with the sanction of ¹[the Provincial Government] no Magistrate shall take cognizance of any offence punishable under this Act, unless the prosecution is instituted within six months from the date on which the offence is alleged to have been committed.

Protection of persons acting in good faith and limitation of suits and prosecutions. 24. (1) No suit, prosecution or other legal proceedings shall be instituted against any person for anything which is in good faith done or intended to be done under this Act or the rules.

(2) No suit shall be instituted against ²[the Crown] and no prosecution or suit shall lie against any Tobacco Officer in respect of anything done or alleged to have been done, in pursuance of this Act, unless the suit or prosecution has been instituted within four months from the date of the act complained of.

Recovery of tobacco revenue, etc. 25. The following moneys, namely :—

(a) all tobacco revenue,

(b) any loss that may accrue in consequence of the suspension or cancellation of a licence,

may be recovered from the person primarily liable to pay the same or from his surety (if any) as arrears of land revenue.

Appeals and revision. 26. (1) Any person aggrieved by any order under this Act may appeal—

(a) to the Collector, if such order was passed by a Tobacco Officer other than the Collector or Commissioner,

(b) to the Commissioner, if such order was passed by the Collector, and

(c) to ¹[the Provincial Government], if such order was passed by the Commissioner except on an appeal under clause (b).

(2) Every order passed in appeal under this section shall, subject to the powers of revision conferred by sub-section (3), be final.

(3) ¹[The Provincial Government], ³[the Commissioner or the Collector] may call for and examine the record of any order or the proceedings of any ⁴[subordinate] Tobacco Officer for the purpose of satisfying themselves ⁵[or himself, as the case

¹ The words "the Provincial Government" were substituted for the word "Government" by Adaptation of Indian Laws Order in Council.

² The words "the Crown" were substituted for the word "Government", *ibid.*

³ These words were inserted by Bom. 2 of 1935, s. 7 (1).

⁴ This word was inserted, *ibid.*, s. 7 (2).

⁵ These words were inserted, *ibid.*, s. 7 (3).

may be], as to the legality and propriety of any order passed and as to the regularity of the proceedings of such officer. If in any case it shall appear to ¹[the Provincial Government], ²[the Commissioner or the Collector, as the case may be,] that any order or proceedings so called for should be modified, annulled or reversed, they ³[or he] may pass such order as they ³[or he] may deem fit.

27. (1) ¹[The Provincial Government] may make rules for the purpose of carrying into effect the provisions of this Act. Power of the Provincial Government to make rules.

(2) In particular and without prejudice to the generality of the foregoing provision, such rules may be made for all or any of the following purposes, namely :—

(a) under section 5, regulating the powers and duties to be exercised and performed by Tobacco Officers and the assignment of such powers and duties ;

⁴[(aa) under section 6, prescribing the conditions subject to which, and the authority by which, exemptions may be granted ;]

(b) under section 7, prescribing the manner in which the fees are to be charged, the form of and the conditions and restrictions on which, licences shall be granted ;

(c) under section 8, prescribing the conditions on which licences may be suspended or cancelled ;

⁵[(d) under section 7A prescribing the rates at which, the conditions subject to which and the areas in which a tax on sales of tobacco shall be levied ;

(e) for the purposes of the Schedule hereto annexed, prescribing the varieties of tobacco which shall be classed as Superior and Inferior tobacco.]

(3) Rules made under this section shall be subject to previous publication.

(4) Rules made under this section shall be laid ⁶[before each of the Chambers of the Provincial Legislature] at the session ⁷[thereof] next following and shall be liable to be modified or rescinded by a resolution ⁸[in which both Chambers concur] and such rule shall, after notification in the ⁹[Official Gazette], be deemed to have been modified or rescinded accordingly :

Provided that when, in the opinion of ¹[the Provincial Government], such modification or rescission is likely to defeat or frustrate any of the purposes of this Act, ¹[the Provincial Government] may, by notification in the ⁹[Official Gazette], declare that the modification or rescission shall have no effect and thereupon the rule shall remain in force as if it had not been modified or rescinded.

28. The powers conferred on the Commissioner under this Act may, ¹⁰[with the exception of the powers under sub-section (3) of section 26] subject to the general or special orders of ¹[the Provincial Government], be delegated by the Commissioner in whole or in part, to the Collectors or to any subordinate officer. Delegation of powers.

¹ The words "the Provincial Government" were substituted for the word "Government" by the Adaptation of Indian Laws Order in Council.

² These words were inserted by Bom. 2 of 1935, s. 7 (4).

³ The words "or he" were inserted, *ibid.*, s. 7 (5).

⁴ Clause (aa) was inserted by Bom. 26 of 1935, s. 3.

⁵ These clauses were added by Bom. 6 of 1938, s. 5.

⁶ These words were substituted for the words "upon the table of the Bombay Legislative Council" by the Adaptation of Indian Laws Order in Council.

⁷ The word "thereof" was substituted for the words "of the said Council", *ibid.*

⁸ These words were substituted for the words "of the said Council", *ibid.*

⁹ The words "Official Gazette" were substituted for the words "Bombay Government Gazette" *ibid.*

¹⁰ These words, figures and brackets were inserted by Bom. 2 of 1935, s. 9.

¹[SCHEDULE.

(Section 7.)

Licence Fees.

	Rs.
Wholesale—	
Maximum rate	50
Retail or Hawker—	
(1) Maximum rate in any urban area which the Provincial Government may, by notification published in the <i>Official Gazette</i> , specify—	
Superior tobacco	50
Inferior tobacco	25
(2) Fixed rate in any other area	2
Broker—fixed rate	2]

¹ This Schedule was substituted for the original by Bom. 6 of 1938, s. 6.